

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:15-cr-0152-SEB-TAB
)	
DAMON SMITH,)	
)	
Defendant.)	

- 04

REPORT AND RECOMMENDATION

On October 9, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on February 8, 2019. [Dkt. 354.] Defendant Smith appeared in person with his appointed counsel Dominic Martin. The government appeared by Michelle Brady, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Chris Dougherty

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Smith of his rights and ensured he had a copy of the Petition.
2. An evidentiary hearing was held; testimony was presented and evidence was proffered. The court found Defendant Smith guilty of violation numbers 1 and 2. Specifically, the Court found that Defendant violated the following conditions of his supervised release: “You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon;” and “You shall not meet, communicate, or otherwise interact with a person you know

to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.” [Dkt. 232 at 3.]

3. The Court found the government had not proven the remaining allegations set forth in the Petition by a preponderance of the evidence.

4. The Court found that:

- (a) The highest grade of violation of which Defendant is guilty is a Grade C violation.
- (b) Defendant’s criminal history category is II.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 4 to 10 months’ imprisonment.

5. The government argued for a sentence at the high end of the sentencing guidelines. The defendant argued for time served.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record of the hearing, finds that the Defendant violated the conditions of his supervised release set forth above, and recommends that that Defendants’ supervised release be revoked, and that Defendant be sentenced to the custody of the Attorney General or his designee for a period of ten (10) months, with fifty (50) months of supervised release to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

- 1. You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.
- 2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.

3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement.
13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

Justification: Conditions 1-13 are considered administrative in nature and will enable the probation officer to effectively supervise the offender within the community.

14. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation

officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

15. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
16. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.
17. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.
18. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

Justification: Conditions 14-18 are recommended based on the offender's history of substance abuse.


19. You shall pay the costs associated with the following imposed conditions of supervised release to the extent you are financially able to pay: Substance abuse testing and treatment, mental health treatment. The probation officer shall determine your ability to pay and any schedule of payment.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant waived reading of the above-noted conditions of supervised release. [Dkt. 401.]

The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: 29 OCT 2019



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email generated by the court's ECF system